AUDITOR OF STATE: Meaning of "original invoice" to be used as evidence to obtain refund—Gasoline tax refund.

June 10, 1938.

Hon. Laurence F. Sullivan,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that filling station operators in some cases are soliciting the trade of farmers for delivery of gasoline to them at their respective farms. You further state that the procedure in such a case is that, after the filling station operator has obtained the order, instead of making delivery from his station, he procures delivery to be made from the bulk plant of the company from which he buys gasoline, by tank wagon salesmen of such company. You state that no duplicate delivery ticket is given to the farmer at the time of delivery, but that delivery is receipted for and, upon the basis of the receipt, the gasoline so sold is charged by the company to the filling station operator, who, in turn, issues his customer an invoice.

It is provided by statute that persons who buy or use motor vehicle fuel for the purpose of propelling tractors used for agricultural purposes are entitled under the law to reimbursement for the amount of the gasoline tax paid by them on account of gasoline purchased for the above purpose, "upon presenting to the Auditor of State a statement accompanied by the original invoice showing the payment of such purchase, including the motor vehicle fuel license fee due thereon." (Our italics). Burns' Indiana Statutes Ann. 1933, section 47-1505.

You request an official opinion defining the term "original invoice" as used in such provision of the statute, calling my attention especially to the word "original."

An invoice is defined to be "a written account, or itemized statement of merchandise shipped or sent to a purchaser, consignee, factor, etc., with the quantity, value or prices, and charges annexed." (Webster’s New International Dictionary, 2d edition.) It is an instrument made by the seller and delivered to the buyer and as used in the law under consideration, its date supplies the date from which the time allowed for applying for a refund begins to run, and, apparently, should
bear the same date as the date of the sale and purchase, since, under the law, it is used to show such date of purchase. While, ordinarily, as indicated in the foregoing definition, the statement of price is a part of the invoice, this particular item seems not to be important as applied to the law under consideration; but the statement of the date of purchase, the name of purchaser and number of gallons purchased, are quite important, it being provided that to change either of the above items on the original invoice and to submit such changed invoice for the purpose of obtaining a refund constitute a misdemeanor. Burns' Indiana Statutes Ann. 1933, section 47-1505.

It is apparent, therefore, that the invoice in such cases is accepted as an important item of evidence as to date of purchase, name of purchaser and number of gallons purchased, and an effort is made to eliminate, as far as possible, inaccuracies in the statement. I do not think the use of the descriptive adjective "original" before the word "invoice" can be considered as indicative of the time when the invoice must be issued or the method to be employed in issuing it. The word "original" is apparently used to distinguish between the original of the invoice issued by the seller and the copy of such document. In other words, the evidence to be submitted in support of a refund, insofar as shown by the invoice, is to be a statement having its origin with the seller and to be the original of the statement. This was the holding of the court in the case of Oregon-Washington R. & Nav. Co. v. Hoss, secretary of state, (Supreme Court of Oregon) 274 Pac. 314. Note the language of the court on page 316:

"Some stress is laid by defendant upon the fact that the statute as amended by chapter 23, Laws 1925, requires that the affidavit for a refund must be accompanied by the 'original invoices.' Counsel for defendant construes this to refer to the first invoice, concededly erroneous, furnished when the gasoline was sold plaintiff, but it is clear the word 'original' as there employed is used in contradistinction to a copy and not in reference to time."

However, while I do not think the word "original" as used to describe the invoice which may be used in an application for a refund has reference to the time or method of issuing, in my opinion, the importance of the evidence contained in the
invoice with respect to the right to a refund shows that it is contemplated that it shall have been issued in the usual course of business and as a part of the transaction involved in the sale and purchase and delivery of the gasoline on account of which a refund is claimed, so as to protect its sanctity as evidence of the matters as set out therein. The department would, undoubtedly, have the right to investigate any invoice which was submitted for the purpose of obtaining a refund, in order to determine its genuineness and accuracy, and I think that, under the statute, the department would be within its rights, after notice, to require that the delivering agency in a case such as you have described give evidence to the purchasing claimant of the name, date, and the amount delivered, for the purpose of using it as in the nature of an invoice or as further substantiating an invoice thereafter issued by the seller.

PUBLIC INSTRUCTION, DEPARTMENT OF: Selection of textbooks, whether State board's selection must be followed.

June 10, 1938.

Hon. Grover Van Duyn,
Asst. Supt. of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter which is in part as follows:

"The local school administrators adopted a textbook in biology for the year 1937-38. According to the statute, this adoption is for a period of five years. In the recent state adoption of high school textbooks, a multiple list of texts were adopted in biology. This multiple list did not include the text adopted by the school board as mentioned above."

Based upon the foregoing statement of facts, you submit the following question:

"Shall the local school authorities continue the use of the text which was adopted prior to the adoption of the state board or shall the adoption of the state board be followed?"